September 2, 1953
Opinion No. 53-161

TO: The Honorable Morris K. Udall
Pima County Attorney
Pima County Courthouse
Tucson, Arizona

RE: Taxation of Hughes Aircraft Facility

QUESTION: Is the Hughes Tool Company liable for 1952 real estate taxes on its plant near Tucson?

This opinion for clarity's sake will be divided into five subdivisions. These subdivisions are entitled as follows:

I. APPRAISEMENT OF EXEMPTION STATUTES IN GENERAL.
II ATTACHMENT OF THE TAX LIEN PRIOR TO ANY ACQUISITION BY THE GOVERNMENT
III ASSESSMENT OF TAXES AGAINST THE RECORD OWNER OF REAL ESTATE
IV REQUIREMENT OF DELIVERY AND ACCEPTANCE OF A DEED
V EVALUATION OF THE FACTS IN THE PRESENT CASE

It is the contention of the Hughes Tool Company that they executed a warranty deed to the property in question on December 31, 1951 in which the United States of America was the grantee. On the 4th day of February, 1952 this deed was manually delivered to Mr. P. G. Hart, the United States Air Force Contracting Officer. On this date Mr. Hart claimed that he accepted this deed in his capacity as Air Force Contracting Officer. This deed has never been recorded.

Mr. Leo Finch, the assessor for Pima County, received no notice of this supposed transfer outside of newspaper articles, until an affidavit signed by P. G. Hart was presented to him. This affidavit is dated the 4th day of June, 1953 and it was recorded in Pima County July 1, 1953.

In the light of this transaction the Hughes Tool Company claims that no real estate taxes are due and owing for the year 1952.

I. APPRAISEMENT OF EXEMPTION STATUTES IN GENERAL. The basis for the exemption claimed by the Hughes Tool Company is the following excerpt from the Arizona Constitution, Article 9, Section 2:

> "Sec. 2. (Tax Exemption.)--There shall be exempt from taxation all federal, state, county and municipal property. * * * " (Emphasis supplied.)

The last two sentences of the above-mentioned section of the Arizona Constitution are of great importance, and they read as follows:

> "* * * All property in the state not exempt under the laws of the United States or under this constitution, or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law. This section shall be self-executing."

From this constitutional provision it is apparent that federal property is exempt from taxation, but that all property not exempt shall be subject to taxation to be ascertained as provided by law. It is the opinion of this office that the Hughes Plant near Tucson was not during 1952 "federal property" within the meaning of this constitutional provision, and that the property falls within the class of property that is not specifically exempt from taxation, and, therefore, is subject to taxation as provided by law.

Before tackling the particular aspects of the problem at hand, it would be wise to review in a general manner the construction which the courts have placed upon exemption statutes and constitutional exemption clauses. The basic rule to be gleaned from the Arizona authority is that laws exempting property from taxation are strictly construed. There is a presumption against the exemption, and every ambiguity in the statute will be construed against allowing such an exemption. Such is the uniform holdings of the following Arizona cases: WELLER v. PHOENIX, (1931) 39 Ariz. 148, 4 P. 2d 665; CONRAD v. MARICOPA COUNTY, (1932) 40 Ariz. 390, 12 P. 2d 613; LOIS GRUNOW MEMORIAL CLINIC v. OGLESBY, (1933) 42 Ariz. 98, 22 P. 2d 1076; STATE TAX COMM. v. SHATTUCK, (1934) 44 Ariz. 379, 38 P. 2d 631; OGLESBY v. POAGE, (1935) 45 Ariz. 23, 40 P. 2d 90; STATE v. ALLRED, (1948) 67 Ariz. 320, 195 P. 2d 163.

On page 152 of Volume 39 in the case of WELLER v. CITY OF PHOENIX can be found the following quote:

> "It is the universal rule that a claim of exemption from taxation by virtue of a statute is construed strictissimi juris, and exemption must be granted in terms too plain to be mistaken. This is invariably held in regard to general taxation. Philadelphia etc. R. Co. v. Maryland, 10 How. 376, 13 L. Ed. 461; 26 R.C.L., p. 313." Weller v. City of Phoenix, supra.

The court in CONRAD v. COUNTY OF MARICOPA, (1932) 40 Ariz. 390, 12 P. 2d 613, had the following to say:

> "There are two general principles which we think are applicable to this situation. The first is that laws exempting property from taxation are to be construed strictly. The presumption is against the exemption, and every ambiguity in the statute will be construed against it. * * * " (Emphasis supplied.)

The court in LOIS GRUNOW MEMORIAL CLINIC v. OGLESBY, (1933) 42 Ariz. 98, 22 P. 2d 1076, reaffirmed the above two decisions by saying:

> "In considering the proper legal interpretation and application of laws exempting property from taxation, we are necessarily guided by the well-established principle that such laws are to be strictly construed and that the presumption is against tax exemptions."

Re-emphasis of this point is provided by the Supreme Court of Arizona in OGLESBY v. POAGE, (1935) 45 Ariz. 23, 40 P. 2d 90, on page 27:

> "A claim of exemption from taxation is construed strictissimi juris. Philadelphia etc. R. Co. v. Maryland, 10 How. 376, 13 L. Ed. 461. And all property not expressly declared exempt is subject to taxation. Section 2, art. 9, supra * * *"

From this review of Arizona authority it is manifest that tax exemptions are not to be allowed unless the claimed exemption comes explicitly within the purview of a statute granting such an exemption.

The position of the federal courts, which is very similar to that of the Arizona Supreme Court, is succinctly stated in PHIPPS v. COMMISSIONER OF INTERNAL REVENUE, (1937) 91 Fed. 2d 627:

> "Exemption is not lightly inferred or readily implied. Philadelphia & Wilmington R. R. v. Maryland, 10 How. 376, 393, 13 L. Ed. 461; Vicksburg, S. & P. R. R. Co. v. Dennis, 116 U. S. 665, 668, 6 S. Ct. 625, 29 L. Ed. 770; Helmer v. Colonial Trust Co. 275 U. S. 232, 235, 48 S. Ct. 65, 72 L. Ed. 256. A provision granting it is construed against the taxpayer in respect to all ambiguities, and immunity is not founded upon doubtful phrases or ambiguous language. Hoge v. Railroad Co., 99

> U. S. 348, 25 L. Ed. 303; Bank of Commerce v. Tennessee, 104 U. S. 493, 26 L. Ed. 810; Bank of Commerce v. Tennessee, 161 U. S. 134, 146; 16 S. Ct. 456, 40 L. Ed. 645; Cornell v. Coyne, 192 U. S. 418, 24 S. Ct. 383, 48 L. Ed. 504; Millsaps College v. Jackson, 275 U. S. 129, 48 S. Ct. 94, 72 L. Ed. 196; Riverdale Co-op Creamery Ass'n. v. Commissioner (C.C.A.) 48 F. (2d) 711; Sun-Herald Corporation v. Duggan (C.C.A.) 73 F. (2d) 298; Retailers Credit Ass'n. v. Commissioner (C.C.A.) 90 F. (2d) 47. An asserted exemption will be denied unless it is granted by statute in plain terms. (Cases cited.)"

Concerning tax exemptions, the Arizona Supreme Court has held that an exemption is an incident to ownership, and that it is incumbent on any person claiming that his property is exempt to show his status. CALHOUN v. FLYNN, 37 Ariz. 62, 289 P. 157; POTHAST v. MARICOPA COUNTY, 43 Ariz. 302, 30 P. 2d 840. The following quote from an Arizona case indicates the feeling of our Supreme Court on this matter:

> "It is incumbent upon one who would claim the exemption to show by satisfactory proof that he falls within one of the classes named. As is said in one case: 'What constitutes an exemption from taxation is a question of law; but whether a particular piece of property is within the exemption or not depends upon the existence or nonexistence of certain facts capable of proof, which, of course, is a matter for the determination of a jury, or trying tribunal performing the functions of a jury . . .' In re Swigert (People v. Illinois Cent. R. Co.), 119 Ill. 83, 6 N. E. 469, 470." (Calhoun v. Flynn, 37 Ariz. 62, 289 P. 157 (1930).)

The following conclusions are deductible from the above analysis. First, tax exemptions are not lightly inferred or readily implied. Second, a tax exemption concerning property is an incident to ownership and it is incumbent upon any person asserting property to be exempt and to show that it comes within the exemption claimed. Third, in the present situation it becomes obligatory for Hughes Tool Company to show that the property which it claims to be exempt was "federal property" during 1952 as contemplated by Section 2, Article 9, of the Arizona Constitution. In other words, the Hughes Tool Company must prove that during 1952 the Federal Government "owned" the real estate in question.

The word "owner" has been defined by a great number of cases, and a few such cases will be briefly analyzed. In the case of SCROGGINS v. NAVE, 119 S. W. 158, 159, 133 Ky. 793, the word "owner" as used in a statute authorizing the owner of land, though not in actual possession, to sue for trespass thereon, was held to mean one who owns the land by a title of record deducible from the commonwealth, or one who has acquired ownership by adverse possession of the land. The case of MILLERSON v. T. W. DOHERTY LAND & CATTLE CO., Mo., 241 S. W. 907, 908, held that a tax sale pursuant to a judgment in a suit against the record owner passed title to the purchaser, notwithstanding that there had been a previous conveyance of the land by an unrecorded deed under Rev. St. 1889, section 7682, in force at the time of prosecution of the tax suit requiring such suit to be prosecuted against the "owner". Under this statute in this instance the owner was defined to be the owner of record and not the holder of the unrecorded deed.

The case of PENINSULAR STOVE CO. v. CRANE, 197 N. W. 693, 696, 226 Mich. 130, ruled to the effect that under a statute providing for notice of a claim of a mechanic's lien on the "owner", a service of notice on the holder of the record title was sufficient, since the record holder is presumptively the one most interested in the property against which the lien was asserted in view of Comp. Laws 1915, section 14804. And in the CITY OF ST. JOSEPH EX REL. SWENSON v. FORSEE, 84 S. W. 98, 110 Mo. App. 127, the person shown by the public records to be vested with the title to real property was held the "owner" thereof, within Rev. St. 1899, section 5686, requiring special tax bills to state the name of the "owner" of the property.

These cases point to the conclusion that "ownership" refers in many instances to record ownership, and in Part III of this opinion this specific problem will be dealt with at some length. With the above material as a background, it now remains to deal specifically with the problems of the present situation.

II. ATTACHMENT OF TAX LIEN PRIOR TO ANY ACQUISITION BY THE FEDERAL GOVERNMENT. Section 73-505, A.C.A. 1939, reads as follows:

> "73-505. Lien for taxes--Liability of property--Homestead exempt.--Every tax levied under the authority of this chapter upon real or personal property shall be a lien upon the property assessed. The lien shall attach on the first Monday in January in each year, and shall not be satisfied or removed until such taxes, penalties, charges and interest are all paid, or the property has finally vested in a purchaser under a sale for taxes. The lien shall be prior and superior to all other liens and encumbrances upon the property, except liens or encumbrances held by the state of Arizona. Personal property shall be

> liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property, and a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person, shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made; but real property occupied as a homestead shall not be charged for taxes other than the taxes due on such homestead." (Emphasis supplied.)

Mr. P. G. Hart's affidavit dated July 1, 1953 reads in part, as follows:

> "The manual passing of the Warranty Deed from Hughes to the Government occurred on 4 February, 1952 on which date the deed was delivered by William B. McGee, Comptroller of Hughes Aircraft Company, a division of Hughes Tool Company, to and accepted by the Air Force Contracting Officer." (Emphasis supplied.)

From the reading of the above affidavit it becomes patent that the acceptance (if any) and delivery (if any) of the deed took place on February 4, 1952. This date was subsequent to the attaching of the tax lien on the first Monday in January 1952. As will be shown later both delivery and acceptance of a deed are essential before title passes. For the sake of analysis in this section of the opinion, it will be assumed that title as between the parties passed to the Federal Government on February 4, 1952, for in the light of the affidavit of Mr. Hart and later discussion in this opinion, title could not have passed prior to this date. However, in view of the above statute, the tax lien for the year 1952 had already attached; therefore, the Federal Government took the land subject to such lien. Under the provisions of the warranty deed it becomes incumbent upon Hughes Tool Company to satisfy this lien, for the statute states that this lien, having once attached, "shall not be satisfied or removed until such taxes, penalties, charges and interest are all paid, or the property has finally vested in a purchaser under a sale for taxes."

It has been contended that this Arizona statute stating that the tax lien attached the first Monday in January of each year does not mean what it says. To support this view two Arizona cases are cited; these cases are TERRITORY v. PERRIN, (1905) 9 Ariz. 316, 83 P. 361, and HALLAS v. EVANS, (1949) 69 Ariz. 14, 208 P. 2d 1152. Before analyzing these cases carefully, it will be wise to keep foremost the general rule which was stated in the previous section of this opinion, to wit, that tax exemptions are not readily implied or lightly construed. Any deviation from the explicit meaning of Section 73-506, supra, will be in effect an establishment of a tax exemption by implication.

The facts in the case of TERRITORY v. PERRIN, supra, are as follows: The case resulted from an action brought at the relation of the treasurer of Coconino County against Edward B. Perrin. This action was brought to enforce real estate taxes against the lands in question for the year of 1903. The case discloses that Perrin had corresponded with the United States prior to 1903 concerning the possibility of the United States purchasing certain land which he owned, and on which the taxes were levied for the year 1903. Perrin was seeking to trade his land for certain other federal lands. Forms of deeds of relinquishment from Perrin to the United States were approved and accepted by the Secretary of the Interior in April, 1902, and the President of the United States issued a proclamation incorporating into the federal reserve the lands of Perrin.

It was part of the agreement entered into with the Secretary of the Interior that Perrin should, as soon as practicable, execute to the United States deeds of relinquishment to his lands. These deeds were so executed, and on the 31st day of January, 1903, were caused to be recorded in the office of the recorder in the county in which the lands are situated, and abstracts of title to these lands were furnished to the Secretary of the Interior. In April 1903 the Secretary of Interior approved the said abstracts and the deeds of relinquishment. After the agreement reached by correspondence and the proclamation of the President, Perrin exercised no control over the lands in question, but the lands were in all respects treated as a part of the federal forest reservation, in which they were located.

The Territory of Arizona contended that, although the deeds of relinquishment were filed and recorded on January 31, 1903, the government took no title to the lands until the deeds and abstracts were approved by the Secretary of the Interior, and the selection of the lands in lieu of those relinquished were made by Perrin and approved by the Land Department of the government; and, since such selections and approvals were not made until after the first Monday in February, 1903, the lien for taxes for the year 1903, by virtue of the provisions of paragraph 3833 of the Revised Statutes of Arizona of 1901, attached to the lands on the first Monday in February in that year.

The Supreme Court of Arizona examined the federal law under which the lands were relinquished to the government, and the court reached the conclusion that there was nothing in that act which makes the vesting of title in United States of the relinquished lands dependent upon the selection of the lands granted in lieu thereof. The Territory of Arizona was urging that, this transfer being an exchange of land, the title does not vest in the government until the selection of the lieu lands has been made and approved. The court could not agree with this conclusion, but said:

> " * * *, the legal title vested in the United States immediately upon the filing for record of the deeds of relinquishment, subject, perhaps to be divested should the secretary of interior disapprove the abstracts of title. The consideration for the grant is the right, under the law, to select other lands in lieu of those relinquished. After the deed is recorded and delivered, the grantor cannot, by any act of his, encumber the title as against the United States. He has no right to the land which he can enforce." (Emphasis supplied.) Territory v. Perrin, supra, page 319.

Here the deed to the United States was recorded prior to the time when the tax lien attached. The Supreme Court of Arizona stressed this fact, and said that the time of recordation and delivery of the deed was the time when the title passed to the United States as far as the tax statutes of Arizona are concerned. In this instance such recordation and delivery was prior to the attachment of the tax lien. This is an early assertion by the Supreme Court of Arizona that title to lands as it affects the tax statutes passes only upon public recordation of such deeds transferring title. In the case before us, the deed by Hughes Tool Company to the United States Government has never to this day been recorded. With the Perrin case as a precedent, it becomes self-evident that tax wise, title to the lands in question has never passed to the Federal Government. As the Arizona Court points out, once the deed is recorded the grantor cannot by any act of his encumber the title as against the United States, the grantee. This seems to be one of the basic foundations for the rationale used by the court in its holding.

The court continues in its opinion, saying that there is another reason why the action by the Territory of Arizona must fail. Stating that the record showed the Secretary of Interior approved the abstracts of title and selected the lieu lands in April 1903, the court concluded that during the month of April 1903 all had been done that even the Territory of Arizona contended should have been done to vest the full legal and equitable title in the United States. The court then phrased this rule:

> "Lands acquired for public purposes during the period between the first and final steps of taxation are exempt from taxes levied during the year in which they are acquired. * * * And this is true even where, as in this territory, the legislature has declared that a lien for taxes shall attach at a date prior to the time when the first steps are taken to subject the real estate to taxation. There can be no real or effective lien until the amount of the taxes is ascertained and assessed." Territory v. Perrin, supra, page 320.

Under the provisions of the laws of Arizona which were in effect at that time, the tax rate was not fixed until the third Monday in August of each year, and the levy and assessment were not completed until the duplicate assessment roll was prepared and certified as provided by Chapter 5 of Title 62 of the Revised Statute of Arizona of 1901. The court then surmised in the Perrin case that even if the contention of the Territory of Arizona was correct, the land would still be exempt from taxes under the rule as set out above. The Territory of Arizona contended that title as contemplated by the tax statutes did not pass to the United States until April of 1903. It was not until April that the selection of the lieu lands was made and approved. However, even April was over three months prior to the final fixing and levying of the taxes which was done on the third Monday of August of each year at the time of the Perrin case.

The language of the Perrin case might be applicable in the case at hand, if the land had passed to the Federal Government prior to the time the taxes were levied and assessed in the year 1952. However, the Arizona court in the Perrin case set up the requirement that before land would be considered as passing from a grantor to a tax exempt grantee under the tax statutes, the deed showing this transfer must have been recorded prior to the assessment and levy of such taxes. This was not done in the present situation.

In the Perrin case the Arizona court had established a tax exemption by implication, but in so doing it had set up certain requirements which had to be met before such an exemption would arise. One of these basic requirements was that the deed showing the transfer to an exempt owner must be recorded prior, if not to the attachment of the tax lien, then to the assessment and levy of such taxes.

As has been reiterated before, tax exemptions are not readily inferred or lightly implied. In the Perrin case the Arizona court has tended to establish an exemption by implication. In permitting such an exemption the court sought to encompass the exemption within certain well-defined boundaries. Unless the fact situation falls within the well-defined limits as set forth by the court, no tax exemption should be allowed. The situation in the present case does not fall within the fact situation termed essential by the Perrin case.

The second case to be analyzed is HALLAS v. EVANS, 69 Ariz. 14, 208 P. 2d 1153. For the purpose of analysis the facts of this case can be set forth rather simply. The question in this case, which is applicable to the situation at hand, was whether a widow was entitled to her widow's exemption from real estate taxes during the year of 1931. The husband of the widow died on February 10, 1931. The widow completed the purchase price payments, and in August of 1931 the deeds were recorded. The incidence of widowhood came after the first Monday in January, the time at which the tax lien for the year attached. The

question to be determined was whether this widow was entitled to her widow's exemption in light of this fact. In considering this problem the court first made this general statement of the law:

> "The general rule is without doubt that if the tax process fixes a lien, or is complete and the tax becomes fixed, at that point in the tax year prior to the acquisition of the property, or prior to the effective date of the exempting statute, the payment of the tax is inescapable." Hallas v. Evans, supra, page 18.

In analyzing when tax liens become fixed in Arizona, the court had this to say:

> "Our statute fixes the lien of taxes upon the property as of the first Monday in January. However, the amount of the lien for taxes for the current year is ascertained and fixed and levy made some time between the first Monday in July (Sec. 73-417, A.C.A. 1939) and the first Monday in September (Sec. 73-423, A.C.A. 1939) of each year." Hallas v. Evans, supra, page 19.

The court then goes on to specifically adopt the rule as set forth in TERRITORY v. PERRIN, supra. In so doing, the widow was held to be entitled to her widow's exemption for the year of 1931. The decision of TERRITORY v. PERRIN, supra, has been carefully analyzed above, so there will be no need for further discussion of this case.

The record of the Hallas case shows that the deeds to the land in question were recorded during August 1931. The amount of the lien for taxes for the year 1931 was not fixed and ascertained nor was any levy made before the first Monday in September 1931. With these facts it thus appears that the court strictly followed the rule laid down in the Perrin case, as it said it was doing. The deeds to the widow were recorded in August which was prior to the first Monday in September. So once again we have the record title passing to the person claiming the exemption prior to the date the court fixed for the final attaching and levy of the tax lien. Once again the tax exemption as originally conceived in the Perrin case was canalized within the limitations set up by the court in the Perrin case. Once again the Arizona Supreme Court recognized that title, as it affects the tax statutes, passes only when the deed passing the title to the exempt owner is recorded.

Several Arizona cases have reinforced the thesis that the tax exemption which was originally established in TERRITORY v. PERRIN, supra, should be strictly construed and strictly limited within the boundaries set up in that case. Our court in PACKARD CONTRACTING CO.

v. ROBERTS, (1950) 70 Ariz. 411, 222 P. 2d 791, 794, had this to say:

> "The law in this state is well settled to the effect that taxes are liens upon the property assessed until paid. There is no way to discharge a tax lien except by payment or sale of the property for taxes. (Cases cited.) * * * " Packard Contracting Co. v. Roberts, supra, page 416.

In this case the Arizona Supreme Court was construing Section 73-506, supra. In STATE TAX COMMISSION v. UNITED VERDE EXTENSION MINING CO., (1931) 39 Ariz. 136, 4 P. 2d 395, the Arizona Supreme Court reasoned in this manner:

> "It is true that taxes are a lien on property, attaching on the first Monday in January of each year. * * * But we think this does not necessarily imply that the valuation must be fixed as of that date, although such may be the usual custom. * * * " State Tax Comm. v. United Verde Extension Mining Co., supra, at page 141.

The final conclusion which is reached by this office under the second section of this opinion can be stated succinctly. Under the rule envisaged by the Hallas and Perrin cases, record title must be in the tax exempt owner of real estate prior to the first Monday in September of the year in question, if an exemption is to be extended to the real estate.

III. ASSESSMENT OF TAXES AGAINST THE RECORD OWNER OF REAL ESTATE. The record shows that the title to the land was and still is in the Hughes Tool Company, and the assessor is not obliged to go further. Under the circumstances he was justified in assessing the land to the Hughes Tool Company, the record owner of the land. In PENNSYLVANIA CO. v. BERGSON, (1932) 307 Pa. 44, 51, 159 A. 32, 34, the Pennsylvania Supreme Court said:

> "When a deed or other conveyance is duly recorded and registered in the name of a given person, he, as the registered title holder, is regarded as the 'owner' for purposes of assessment and taxation, and is personally liable for taxes levied on the property. This liability attaches because he holds himself out to the world through public records as owner by being registered and recorded as owner. * * * These authorities may, for the purpose of tax-

> ation, treat individuals in their several relations as they appear on the designated indices or the public records that are provided. * * * " (Emphasis supplied.)

See also GERMANTOWN TR. CO. v. STANLEY CO., 338 Pa. 533, 13 A. 2d 406; STARLING v. W. ERIE AVE. B & L ASS'N., 33 Pa. 124, 3 A 2d 387; NORTH PHILADELPHIA TR. CO. v. HEINEL BROS. INC., 315 Pa. 385, 172 A. 692.

This is true whether or not the record owner is in fact the actual owner (FIDELITY-PHILADELPHIA TRUST CO. v. BANK & TRUST CO., 326 Pa. 262, 192 A. 121), though the actual owner who is not the record owner may also be assessed if, of course, not exempt for some reason from taxation (PENNSYLVANIA STAVE COMPANY'S APPEAL, 236 Pa. 97, 84 A. 761; BEMIS v. SHIPE, 25 Pa. Super. 42; COUNTY OF FRANKLIN v. McCLEAN, 93 Pa. Super 165). The application of this principle does not constitute a violation of due process within the meaning of the Fourteenth Amendment of the Federal Constitution (FIDELITY-PHILADELPHIA TRUST CO. v. BERGSON - No. 1 - 328 Pa. 545, 196 A. 28).

It is well established that property held by the United States for the purposes conferred on the government by the Constitution and laws of the United States is beyond the pale of taxation by a state or its political subdivisions (IRWIN v. WRIGHT, 258 U. S. 219, 42 S. Ct. 293, 65 L. Ed. 573; CITY OF PHILADELPHIA v. HARRY E. MYERS, 102 Pa. Super 424, 157 A. 13).

But this sound and well settled principle of constitutional law is not in any way applicable to the instant circumstances, for the tax on the Hughes plant is not assessed against the government, but rather against the Hughes Tool Company, which is operating the plant in furtherance of its own business, on land to which it holds the record title.

In upholding the minimum price regulations of the Pennsylvania Milk Control Law as it affected a dealer selling milk to the government to be disposed of on lands belonging to the State of Pennsylvania, but in use by the Federal Government as a military encampment, Mr. Chief Justice Stone, in speaking for the United States Supreme Court, in PENN. DAIRIES, INC. v. THE MILK CONTROL COMMISSION, 318 U. S. 261, 270, said:

> "The trend of our decisions is not to extend governmental immunity from state taxation and regulations beyond the national government itself and governmental functions performed by its officers and agents. We have recognized that the Constitution presupposes the continued existence of the states functioning in coordination with the national government, with authority in the states to lay taxes and to regulate their internal affairs and policy, * * *."

It is a matter of great seriousness to the states and their governmental subdivisions that individuals and corporations pay their fair share in taxes for the benefits they and their personnel undoubtedly receive from the public services they enjoy, such as police and fire protection, the use of streets and schools, and other advantages of community life. They are adjuncts of civilization, necessary but expensive, and those who have them should and must pay for them.

The fact that one of the two possible parties liable for a tax --- the record owner or the actual owner (again assuming for sake of analysis that the United States if the actual owner) --- may for some reason be exempt from taxation will not defeat the right of the taxing power to enforce payment by the other.

In COUNTY OF FRANKLIN v. McCLEAN, 93 Pa. Super. 165, the county levied a tax against buildings erected upon lands leased by the State of Pennsylvania to a tenant who owned the buildings and under his lease had the right to remove the same at the expiration of his term. The record owner being the State of Pennsylvania, which is not subject to taxation by its subdivisions, the tax upon the structures was assessed in the name of the tenant, the real owner thereof, and this was held proper by the Superior Court of Pennsylvania. In this case the court said:

> "We regard the fact that appellant's estate is held under the State as lessee, rather than under an individual, as immaterial. The tax is not laid against the State nor its interest in the land. * * * "

In KITTANNING ACADEMY v. KITTANNING BORO., 8 Pa. Super 27, it was held that a dwelling-house and property leased by a corporation for school purposes for a term of years at an annual money rental and an agreement to pay taxes and keep the property in repair does not work an exemption from taxes assessed against the owner of the real estate.

The basic correctness of the proposition that the County Assessor need not look beyond the records in assessing and taxing real property becomes clear upon closer scrutiny of the situations which, quite conceivably, would arise if the assessor could accept other evidence as proof of ownership, if such ownership were to be the basis for a tax exemption.

For example, a person could come into the assessor's office with an unrecorded deed of his property to the city. This person might say that for reasons other than that of taxation he does not want to record this deed, but that he wants the land henceforth to be exempt from taxation. The opportunities for fraud and collusion

are manifest in such a situation. This person might go so far as to get an affidavit from a city official saying that he had received and accepted on behalf of the city a deed from this person to the real estate in question. None of this would prevent this person from later encumbering the property or selling it to a bona fide purchaser. The confusion which would be engendered by such a system whereby tax exemptions would be based on unrecorded deeds is evident.

It is the basic conclusion of this office that before a tax exemption in any given year will be permitted for real estate which is claimed to be owned by a tax exempt owner, the deed to such owner must be recorded in the office of the County Recorder wherein the land is located prior to the first Monday in September of the year in question. (HALLAS v. EVANS, supra).

The strong practical considerations of public policy which prompted the decision in STATE v. ALLRED, supra, are persuasive reasons why there can be no tax exemption in this case. Our entire taxation system in Arizona is predicated upon certainty of revenue and adequate income to meet all budgeted state and local expenses. If secret or unrecorded deeds and transfers can, after budgets are fixed and the tax levy made, alter the total assessed valuation, a chaotic situation might result. It is a reasonable and just requirement that anyone who claims exemption be required to make his title a matter of public record.

IV. REQUIREMENT OF DELIVERY AND ACCEPTANCE OF A DEED. The basic rule which will be considered in this section of the opinion is stated in the case of PARKER v. GENTRY, (1944) 62 Ariz. 115, 154 P. 2d 517. There the Arizona Supreme Court said:

> "The question whether a deed is delivered may be proved by parol, and the following statement in Seibert v. Seibert, 379 Ill. 470, 41 N. E. (2d) 544, 547, 141 A.L.R. 299, as to what constitutes delivery in a case of this kind is:
>
> > 'It is settled that to constitute a conveyance there must be not only a delivery of the deed by the grantor but also an acceptance by the grantee and it must affirmatively appear that the grantor's intention was that the deed should pass title at the time and that he should lose all control of it. (Citing cases.) It follows that placing a deed in the hands of a grantee does not constitute delivery where it is shown the intention of the parties was that it was not to become operative immediately * * * * ' (Emphasis supplied.)

> "See also: Joslin v. Goddard, 187 Mass. 165, 72 N. E. 948; Hotaling v. Hotaling, 193 Cal. 368, 224 Pac. 455, 56 A.L.R. 734; Gaylord v. Gaylord, 150 N. C. 222, 63 S. E. 1028; Bunn v. Stewart, 183 Mo. 375, 81 S. W. 1091; Elliott v. Murray, 225 Ill. 107, 80 N. E. 77; Elliott v. Merchants Bank & Trust Co., 21 Cal. App. 536, 132 Pac. 280; Kenney v. Parks, 137 Cal. 527, 70 Pac. 556; Taylor v. Taylor, 79 Colo. 487, 247 Pac. 174. In the annotation to 56 A.L.R. 734 and also the annotation in 141 A.L.R. beginning at 305, are found many decisions on the point." Parker v. Gentry, supra, pages 120 and 121.

It becomes apparent in the light of this quote that to constitute a conveyance there must be both a delivery and acceptance of the deed in question.

IV-A - DELIVERY: It is essential to a valid delivery that there be some act or declaration from which an intention to pass title may be inferred (BUCHWALD v. BUCHWALD, 199 A. 800, 175 Md. 115; ELROD v. SCHROADER, 88 S. W. 2d 12, 261 Ky. 491); a mere intention to transfer title, without further acts or conduct giving effect to or consummating such purpose is insufficient (TRIPP v. McCURDY, 116 A. 217, 121 Me. 194; LYNCH v. LYNCH, 83 So. 807, 121 Miss. 752; 18 C. J. p. 198, note 25b).

The mere signing of a deed does not constitute delivery of it. Thus it was held in PARROTT v. AVERY, 159 Mass. 594, 35 N. E. 94, 38 AmSR 465, 22 LRA 153, that delivery was not shown where the only fact was that a deed was executed in the presence of witnesses. The court in HUGHES v. EASTEN, 4 J. J. Marsh. (Ky.) 572, 20 AmD 230, said that delivery will not be inferred from the mere fact that the deed was signed and left on a table in the absence of the donee. The following quote is taken from the case of UNITED STATES v. LANE, 258 Fed. 520, 49 App. D. C. 48:

> "The mere signing of a deed does not constitute a delivery of it, and unless it is delivered it cannot be said to be executed."

In the case at hand the only thing which was done on December 31, 1951, according to Mr. Hart's affidavit, was the signing of the warranty deed. Nothing else was done until February 4, 1952; therefore, there could have been no delivery prior to this date in view of the above-cited authorities. It is essential to delivery that the grantor part with dominion and control over the deed, so that it is beyond the possibility of recovery (HEITMAN v. BRUNS, 174 P. 67, 37 Cal. App. 489; ABBE v. DONOHUE, 107 A. 431, 90 N. J. Eq. 597; MATHEWSON v. SHIELDS, 50 P. 2d 898, 184 Wash. 284) and, as a general rule, it is also essential that he relinquish the possession of the deed (18 C. J. p. 201, note 42; IN RE RAHN'S ESTATE, 283 N. W. 285, 230 Wisc. 108; CLARK v. SKINNER, 70 S. W. 2d 1094, 334 Mo. 1190).

IV-B - ACCEPTANCE:

> "It is essential to the validity of a deed that there be an acceptance of the instrument by the grantee * * * ." (26 C.J.S. 253)

From the above quote it is clear that Arizona is in line with the general authority when her Supreme Court requires an acceptance by the grantee before a deed can convey title. (See the quote from PARKER v. GENTRY, supra.) Delivery of the deed generally implies the acceptance by the grantee, but the following quote from WOOD v. CITY OF MONTPELIER, 82 A. 671, is applicable in the present situation:

> "It is claimed by the plaintiffs that, in consequence of what appears, the title to the land vested in the city, and that they are entitled to recover the purchase price, on the ground that the land was sold and conveyed to the city. Title to real estate passes upon delivery of a deed thereof. Harrington v. Gage, 6 Vt. 532; Elmore v. Marks, 39 Vt. 538; In re Lane's Estate, 79 Vt. 323, 328, 65 Atl. 102; Abbott v. Lapoint, 82 Vt. 246, 73 Atl. 166. But the acceptance of a deed by the grantee is an essential element of a good delivery. Denton v. Perry, 5 Vt. 382, King v. Smith, 33 Vt. 22; Dwinell v. Bliss, 58 Vt. 353, 357, 5 Atl. 317; Orr v. Clark, 62 Vt. 136, 19 Atl. 929; Gorham's Adm'r. v. Meacham's Adm'r., 63 Vt. 231, 235; 22 Atl. 572, 13 L.R.A. 676; Gould v. Day, 94 U. S. 405, 24 L. Ed. 232; Creeden v. Mahony, 193 Mass. 285, 79 N. E. 344, 9 Ann. Cas. 1121; Meigs v. Dexter, 172 Mass. 217, 52 N. E. 75; Hartman v. Thompson, 104 Md. 389, 65 Atl. 117, 118 Am. St. Rep. 422, 10 Ann. Cas. 92. The doctrine is that delivery does not depend upon the acts and intention of the grantor alone, but rather upon the acts and intention of both grantor and grantee; and the above cases amply illustrate it.
>
> "In the case of grants obviously beneficial to the grantee, the law will ordinarily presume acceptance by the grantee, unless his dissent is shown. Caledonia County Grammar School v. Howard, 84 Vt. 1, 77 Atl. 877; Moore v. Giles, 47 Conn. 570. This principle of the presumed acceptance of a benefit sought to be conferred applies, not alone in the case of deeds, but is of more general application. Harris v. Harris' Estate, 82 Vt. 210, 72 Atl. 912; Church's Ex'r. v. Church's Estate, 80 Vt. 228, 232, 67 Atl. 549; Bank of the United

States v. Dandridge, 12 Wheat. 64, 6 L. Ed. 552.

> "The plaintiff's argument is based, in part, upon the claim that the doctrine of the presumed acceptance of beneficial grants if applicable in this case. But it is not applicable; for this is an ordinary case of the sale of land, and the fact, somewhat relied upon, that it is beneficial to a town or city to maintain schools does not tend to show that a trade for particular lands, to be used for school purposes, is beneficial, much as it is that the beneficial and necessary character of food, clothing, and money does not tend to bring sales of wheat, cotton, and mining stock within the purview of the benign doctrine sought to be invoked." (Emphasis supplied.)

Here we have an identical situation as in the Wood case. The Federal Government has agreed to purchase the property in question for a consideration which is not to exceed $11,411,898.65. It is not until this consideration is paid that acceptance is presumed on the part of the Federal Government.

The next question to be considered is the time when title is considered as having passed. Ordinarily, where the grantee accepts a deed the acceptance relates back to the time of the original delivery, provided no rights of third persons are involved. Here the rights of the State of Arizona have intervened in the form of tax liens. See the cases of PHELPS v. PHELPS, 206 P. 767, 71 Colo. 343, and KNOX v. CLARK, 15 Colo. App. 356, 62 P. 334, for authority of the rights of third persons.

The following is a quote from KNOX v. CLARK, supra:

> " * * * there is no actual transfer of the title until the acceptance. Until that time, the meeting of minds essential to a contract does not occur. It necessarily follows that if, between the date of the deed and its acceptance, rights of third parties attach to the property, those rights will be superior to, and prevail over, the title of the subsequently assenting grantee. The latter takes the title subject to such liens as have been created, or conveyances as have been executed, before it becomes actually vested in him. Decisions are in existence which, apparently, are not in harmony with the foregoing statement, but it is supported by the great weight of authority. Welch v. Sackett, 12 Wis. 243; Hibberd

> v. Smith, 67 Cal. 547, 4 Pac. 473, 8 Pac. 46; Cravens v. Rossiter, 116 Mo. 338, 22 S. W. 736; Samson v. Thornton, 3 Mete. (Mass.) 275; Bell v. Bank, 11 Bush. 34; Hawkes v. Pike, 105 Mass. 560; Hullick v. Scovil, 4 Gilman, 159; Parmelee v. Simpson, 5 Wall. 81, 18 L. Ed. 542; Tuttle v. Turner, 28 Tex. 759, Croom v. Cotton Co., 15 Tex. Civ. App. 328, 40 S. W. 146; Devl. Deeds, §§ 276, 291." (Emphasis supplied.)

The fiction of relation which carries back the acceptance of a deed, delivered by the grantor to a third person for delivery at the former's death, to the date of delivery by the grantor, cannot operate to the prejudice of strangers who have a standing to go behind the fiction and show the true time of acceptance. EMMONS v. HARDING, 162 Ind. 153, 70 N. E. 142, 1 Ann. Cas. 864.

Consequently, if the consideration was not paid prior to fixing of the tax liens, any acceptance by the Federal Government of the Hughes facility after the fixing of the said liens will not be held to relate back to the time of the manual delivery of the deed on the 4th day of February, 1952.

So far, the following conclusions have been reached in this part of the opinion. They are, to wit: Both acceptance and delivery of a deed are necessary before the instrument becomes valid and passes title from the grantor to the grantee. Acceptance of a deed is not presumed in a common sale, unless the consideration has been paid by the grantee to the grantor. Normally acceptance, if made after the delivery, relates back to the time of the delivery; but this general rule does not apply if the rights of third persons have intervened.

The remaining question to be considered in this section of the opinion is how are acceptance and delivery of a deed established. This question is answered in the following quote from 26 C. J. S. 256-257:

> "While it has been broadly held that the question whether a deed has been delivered is one of fact, the rule has been stated more precisely that such issue ordinarily presents a mixed question of law and fact to be determined by the jury under proper instructions from the court, or by the trial judge sitting without a jury, from all the evidence on that point, where there is conflicting testimony. This rule applies to acceptance or dissent of the grantee, and likewise, to the question of the time of delivery.

> "On the other hand, the question of what facts, if proved, amount to a final delivery and acceptance of a deed is a question of law, although whether such facts exist is a question for the jury. Where there is no conflict in the evidence, the court need not and should not submit the question of delivery to the jury, but in such case may direct a verdict. * * *."

In section five of this opinion the law and analysis of section four will be applied to the facts of the case, as the facts were presented to this office.

V. EVALUATION OF THE FACTS IN THE PRESENT CASE. The facts which were made available to this office point to the conclusion that the Federal Government has not yet accepted the deed to the Hughes Aircraft Facility near Tucson.

Amendment No. 6 to the Contract No. AF 33(038) - 19590, is an amendment to the letter contract between the United States of America (Department of the Air Force) and the Hughes Tool Company. This contract amendment is dated January 21, 1952 and concerns the Hughes Aircraft Facility near Tucson. This amendment reads, in part, as follows:

> "The Deed shall contain a recital of compliance with Title VI of Public Law 155."

The deed referred to is the deed to the real estate in question which Hughes is to give the Federal Government. This contract could not refer to the deed dated December 31, 1951, because nowhere in that deed is there a recital of compliance with Title VI of Public Law 155. Obviously this contract, dated subsequent to December 31, 1951, the date of the deed which was delivered to P. G. Hart, contemplated another and later deed which was to be delivered to the Federal Government by Hughes Tool Company. To our knowledge, no such deed has ever been delivered to the Federal Government.

See the following quote from SHUCK v. SHUCK, (1950) 44 N. W. 2d 767, 772, 77 N. D. 628:

> "'A deed will not be regarded as delivered while anything remains to be done by the parties who propose to deliver it.' 16 Am. Jur. 501, Sec. 113. Before this deed would be complete it would have to be acknowledged. McKee v. Buck, 72 N. D. 86, 4 N. W. (2d) 652; 1 Am. Jur. 325, Sec. 23."

Before the deed in question would be complete it would have to contain

this recital of compliance; therefore, this deed cannot be considered "delivered" because it is incomplete.

As late as May of this year at the request of the United States Government, the title companies in Tucson were making preliminary title surveys of the Hughes facility near Tucson. Although such a fact is not conclusive, it is indicative that title has not yet passed from Hughes Tool Company to the Federal Government.

It is the opinion of this office, in light of the correspondence which has come to our attention concerning the matter of the transfer of the real estate in question, that negotiations are still continuing pertaining to the transfer of the Hughes facility to the Government. The letters written by officials of the Federal Government seem to point to the fact a future acceptance of the deed from the Hughes Tool Company is contemplated. These letters talk about "land to be acquired" by the Federal Government. Language is lacking to the effect that the land had been acquired in the past.

With the above discussion as a basis, it is the opinion of this office that the Federal Government has yet to legally accept the deed to the Hughes facility from the Hughes Tool Company, and the Hughes Tool Company has yet to deliver "the deed" as contemplated by the parties.

C O N C L U S I O N S :

It is the opinion of the Department of Law that:

(1) Tax exemptions are not lightly inferred or readily implied;

(2) A tax exemption concerning property is an incident to ownership and it is incumbent upon any person asserting property to be exempt to show that it is owned by an "exempt owner" within the terms of the statute;

(3) It is obligatory for the Hughes Tool Company to show that the property which it claims to be exempt is "federal property" as contemplated by Section 2, Article 9, of the Arizona Constitution;

(4) The word "owner" in this case should be interpreted as meaning the "record owner";

(5) Under the rule envisaged by the Hallas and Perrin cases, supra, which establishes an exception to 73-506, A.C.A. 1939, supra, record title must be in the tax exempt owner of the real estate prior to

the first Monday in September of the year in question, if an exemption from real estate taxes is to be extended to this property;

(6) For the purposes of assessment of real property, the county assessor and treasurer need not look beyond the records in assessing and levying taxes;

(7) Before any deed becomes a valid and effective instrument it must be delivered by the grantor and accepted by the grantee; (PARKER v. GENTRY, supra)

(8) The mere signing of a deed does not constitute delivery of the deed;

(9) Acceptance of a deed by the grantee does not date back to the time of the delivery if rights of third persons have intervened;

(10) In view of the facts concerning the transfer in question which have been available to this office, it is the opinion of this office that the United States has yet to accept the deed from Hughes Tool Company to its plant near Tucson, and "the deed" as contemplated by the parties has yet to be delivered;

(11) In the light of the above conclusions it is the final opinion of this office that the Hughes Tool Company is liable for the 1952 real estate taxes on its plant near Tucson.

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